IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.538 OF 2003
IN
SUMMARY SUIT NO.2934 OF 2002

M/s.Krupa Plastics Plaintiff

versus

M/s.Hitkari Fibers Limited Defendant

Santosh Shettye i/by M.M.Vashi for plaintiff.

Shailesh Shah with Nagvekar i/by Soloman & Co. for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 4th July 2005

PC :

1. Heard Mr.Shetty appearing for the plaintiff and Mr.Shah for the defendant.

2. The claim in the present summary suit is nothing but interest on the principal amount of Rs.27,03,236/- paid by the defendant to the plaintiff on 22nd December 2001. The principal amount was on account of invoices raised on the defendant by the plaintiff with regard to sale of certain goods. The matter went upto filing of a winding up petition by the plaintiff against

defendant. This winding up petition was admitted and aggrieved by the order admitting the same, the matter was carried in appeal. In the light of the undertaking given to the Appellate Court, the aforesaid principal sum is paid. Now, in terms of the invoice conditions, unpaid interest @ 24% p.a. is being claimed in this summary suit.

3. According to Mr.Shetty, the claim is kept alive by the Division Bench. Further, he states that this amount is towards interest on the principal sum. There is, thus, no dispute to this claim. It admittedly arises on a written contract. Therefore, the plaintiff is entitled to a judgement in his favour.

4. After perusing the plaint and the affidavit in reply, as also considering the submissions of Mr.Shetty, in my view, it is doubtful whether the permission/liberty granted by the Appellate Court could be considered as one to file a summary suit. The summary suit is filed not on the basis of unpaid principal amount under the invoices together with interest but is only filed to claim interest outstanding on the principal. As to whether liability is subsisting and if at all it

is subsisting, then from what date, is something which will have to be considered by this Court and cannot be decided in summary jurisdiction. The defendants have denied their liability and in the affidavit have raised a contention that they are not liable to pay interest and the matter stands concluded by the order of Division Bench. Is the written contract subsisting or not and if it is subsisting, the extent of liability, is something which is to be adjudicated and determined. In the light of this, unconditional leave to defend. Suit transferred to the list of commercial causes with general directions to file written statement, discovery and inspection.

(S.C.DHARMADHIKARI, J.)